DRAFT

WORLDWIDE REGULATORY AFFAIRS

CHRONOLOGY REPORT

JANUARY 1995 - NOVEMBER 1995

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CHRONOLOGY OF RECENT TOBACCO ISSUES

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U.S. LITIGATION

- **CLASS ACTIONS**

  - **BROIN**

    No new developments this year.

  - **CASTANO**

February 1995

17 Judge Okla Jones denied the plaintiff's request for class certification on critical aspects of their claim. The Court also denied the plaintiff's request to certify a class on medical monitoring and held that compensatory damages can only be awarded on an individual bases. Jones certified a narrower class than plaintiffs requested and also certified some issues. In order for the alleged class in *Castano* to recover, millions of individual trials around the country will be necessary as the plaintiffs will have to prove on an individual basis injury in fact, causation, and reliance.

March 1995

8 Plaintiffs' lawyers asked Judge Okla Jones to approve the largest notification effort ever initiated in an American court. Through paid newspaper and magazine advertising and use of the Internet and "900" numbers, the lawyers said they hoped to reach 103 million Americans. This would include 40 million current smokers and an estimated 50 million people who have quit smoking.

Defendants filed a request in Federal District Court that would permit them to appeal the ruling by Judge Jones regarding class certification.

20 Plaintiffs filed a motion asking that the defendants turn over all documents in 30 days, in an effort to speed up a process that usually takes months and also requested that Judge Jones place most of the documents in the public record.

21 *Wall Street Journal* publishes a three-part series "Addiction on Trial" regarding *Castano* case. March 21 story: "Smokers' Suit Tries New Approach: The Industry Made Them Do It" by Milo Geyelin

22 2nd WSJ Story: "South Louisiana, Site of Lawsuit by Smokers, Is Puffers' Paradise" by Bridget O'Brian

23 3rd WSJ Story: "Tobacco Dream Team: Experts Who Insist Nicotine Isn't Addictive" by Suein Hwang and Yumiko Ono.

April 1995

3 PM filed a reply memorandum in support of 28 U.S.C. Section 1292(b) interlocutory appeal and stay of proceedings.

May 1995

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15 U.S. District Judge Okla Jones granted a motion filed by PM and the other defendants to allow them to pursue an immediate appeal to the Fifth Circuit Court of Appeals of his decision to certify certain common issues for class handling. Jones also granted the defendants' motion to stay all proceedings in the trial court until the Fifth Circuit has ruled on the issue of class certification.

15 *New York Newsday* features a three-page piece on the *Castano* suit.

July 1995

26 PM issues a press release with regard to the Fifth Circuit Court of Appeals agreement to hear the tobacco companies' appeal in the *Castano* class-action case. The court would decide whether a consortium of nearly 60 law firms could continue the giant class-action suit.

27 *The New York Times* reports "In a Tobacco Industry Victory, Suit to Get Appellate Review" by Glen Collins. Although deliberations could take a year, most industry executives and analysts think the ruling could be issued in early 1996.

August 1995

2 Glenn Collins reports Tobacco Analysts' Files Subpoenaed in Suit in *The New York Times*. The records of five prominent tobacco securities analysts were subpoenaed by the consortium of 60 plaintiffs lawyers as part of the Castano case.

30 The plaintiff's lawyers subpoenaed the five prominent tobacco analysts requesting every document and/or piece of correspondence relating to tobacco be turned over to them. This included any document reviewed or relied upon in the formulation of their opinions with respect to the purchase of tobacco stock.

- **ENGLE**

April 1995

17 Judge lifted court's imposed stay which allows the plaintiffs' lawyers to propose to the Court the contents of a notice statement to be given to potential members of the class.

? PM asked the Third District Court of Appeal to re-instate the stay while our appeal of the class certification is pending.

September 1995

27 Hearing

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- **STATE SUITS**

  - **FLORIDA**

February 1995

20 PM and RJR announced that they have filed a petition with The Supreme Court of Florida to prohibit the Florida Agency for Health Care Administration and the Florida Department of Business and Professional Regulation from filing and maintaining a lawsuit against the tobacco industry pursuant to the Medicaid Third-Party Liability Act.

21 Under the direction of Governor Lawton Chiles, the State of Florida filed suit against the tobacco industry to recover $1.4 billion of taxpayer money in Medicaid payments for health problems attributed to tobacco-related illness.

21 PM issued a statement that the state's lawsuit is based on an unconstitutional statute that was passed through the legislature in an unconstitutional manner, and is being brought by an illegal, independent agency.

March 1995

8 Governor Lawton Chiles, Mississippi Attorney General Michael Moore, Minnesota Assistant Attorney General Steven Hunegs, West Virginia Lead Trial Counsel Susan Nial held a press conference to announce the formation of a national coalition of states against tobacco companies. They represent the four states that have filed suit against the tobacco industry on behalf of their taxpayers for the money spent treating the tobacco-related illnesses of Medicaid patients.

14 Paul Weyrich of National Empowerment Television's Direct Line interviewed Steve Parrish on the Florida suit.

20 Attorney Douglas Chumbley filed a motion on behalf of the six tobacco companies to put Florida suit on hold while two related lawsuits are resolved.

28 The Florida Senate Commerce Committee voted 11-3 to repeal the law that Governor Chiles steered through the legislature, which enabled him to file the state Medicaid lawsuit against the tobacco industry.

April 1995

7 Palm Beach Circuit Court issued a stay of Governor's lawsuit against tobacco industry. This allows important constitutional issues related to the suit to be addressed first--namely the federal constitutionality of the state statute under which the suit was brought and the state constitutionality of the two agencies bringing the suit. Judge Roger Colton of the Fifteenth Judicial Circuit issued a stay for three months. He also declined to agree to the state's request that no further stays be granted.

18 Florida Supreme Court rejected a tobacco industry request to bar the state from suing the industry to cover the public cost of smoking-related illnesses on the basis that neither the Agency for Health Care Administration nor the Dept. of Business and Professional Regulation had authority to sue the industry.

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28 The Florida House Commerce Committee voted unanimously to repeal the law that Governor Chiles is using to sue tobacco companies for state medical costs of tobacco related illnesses.

May 1995

1 or 6? The Florida Senate voted to repeal the law allowing the Governor to sue tobacco companies.

12 Circuit Judge F.E. Steinmeyer rejected the state's motion to drop Publix, Associated Industries of Florida and the National Association of Convenience Stores from the suit they filed along with PM.

June 1995

16 Circuit Court Judge Steinmeyer ruled that the state's Medicaid law applies only to injuries arising out of conduct that occurred after the effective date of the law--July 1, 1994. Second, the court said that Florida's Agency for Health Care Administration -- the agency charged with administering and enforcing the Medicaid law -- is unconstitutionally structured. PM believes that, if upheld on appeal, this ruling means that no agency or official of the State of Florida has standing to bring an action under the 1994 amendments, including the action that is pending in West Palm Beach. Finally, the judge held that three of the 1994 amendments' substantive provisions -- dealing with market share liability, the abrogation of affirmative defenses, and the use of statistics -- were within the legislature's power to enact. PM believes that this ruling is incorrect and will appeal. The Attorney General(AG) has already expressed his intention to appeal this decision.

19 Philip Morris Inc. issued another statement to clear up the confusion about the Florida Court's decision. This statement reiterated the ruling and also explained more fully the decision.

28 Judge Steinmeyer declared key provisions of the 1994 Amendments to the Medicaid Third-Party Liability Act unconstitutional and held that the state agency charged with administering the state's Medicaid program is unconstitutionally structured. The court held that the new Medicaid law applies only to allegedly tortious conduct occurring AFTER July 1, 1995, the date the new law became effective. The Court also declared unconstitutional the new Medicaid law's provision that allowed the State to join together in a single lawsuit hundreds or even thousands of claims for Medicaid reimbursement without even identifying the injured Medicaid recipients. The Court also struck other portions of the new Medicaid law that attempted to direct judges to interpret Florida law in a manner favorable to the state. Philip Morris issued a statement stating the ruling should provide the basis for the dismissal of a claim by the State of Florida.

- **MASSACHUSETTS**

November 1995

28 PM and four other major cigarette makers filed suit in federal court seeking a declaratory judgement against Massachusetts Attorney General Scott Harshbarger, who has said he intends to bring a lawsuit against the industry. Harshbarger has said

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that the state of Massachusetts intends to file suit to collect funds for Medicaid costs from smoking-related diseases. In a statement released by PM Inc. the companies said the Massachusetts state law as interpreted by Harshbarger violate federal law and unconstitutionally deprive the manufacturers of the Due Process and Equal Protection rights. The other plaintiffs are R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., Lorillard Tobacco Co. and Liggett Group Inc.

- **MISSISSIPPI**

February 1995

14 B&W filed a lawsuit in U.S. District Court against Attorney Richard Scruggs of Pascagoula for $1 million alleging that Scruggs conspired to induce a former paralegal to disclose documents. Scruggs is one of the team of attorneys seeking to sue the tobacco industry for taxpayer money spent treating tobacco-related illnesses. The suit was filed by Attorney General Mike Moore last year.

21 Jackson County Chancery Judge William Meyers of Pascagoula ruled that Mississippi can proceed with its lawsuit seeking compensation for tax dollars spent on Medicaid for the poor and on insurance for state workers who suffer from smoking-related illnesses. PM issued a statement asserting that the Court's procedural ruling appears to be contrary to the law of Mississippi and basic notions of fairness.

March 1995

?? A federal judge in Washington has already ruled that the B&W documents are not stolen, and they were given to Congress. Attorney Richard Scruggs said that the documents were already public record and have appeared in newspapers around the nation.

November 1995

27 Kentucky Circuit Court Judge William Knopf refused to lift a restraining order against former Brown and Williamson executive Jeffrey Wigand and ruled that Wigand must disclose to Brown and Williamson what he plans to say about it before he can testify at the Mississippi Medicaid suit.

29 Jeffrey Wigand completed his deposition in a closed-door testimony for the plaintiffs in the Mississippi case. Suein Hwang reported in *The Wall Street Journal* on November 30 that Attorney General Michael Moore was pleased with the deposition. Wigand is the highest level executive to break ranks with the tobacco industry. Wigand was able to testify after a Mississippi judge let stand a subpoena ordering him to appear at the state's lawsuit despite Kentucky Judge Knopf's earlier ruling. Hwang also reported that Roberta Walburm, a lawyer representing the state of Minnesota said that her legal team had an excellent chance of eventually gaining use of Wigand's deposition for her case.

December 1995

5 Six news organizations asked Judge William Myers to make public the closed-door testimony of Jeffrey Wigand. The judge has taken no action yet but can set a hearing after five working days' notice. Richard Scruggs, the lawyer representing both

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Wigand and the state of Mississippi said the state will probably file it's own motion to unseal the testimony.

- **MINNESOTA**

March 1995

11 PM and other tobacco companies have asked Ramsey County District Chief Judge Kenneth Fitzpatrick for the dismissal of Blue Cross and Blue Shield of Minnesota as a plaintiff and are asking that three of nine counts brought in the lawsuit be dropped. The state of Minnesota, along with Blue Cross, is attempting to recover hundreds of millions of dollars from the tobacco industry as reimbursement for health-care costs associated with smoking-related diseases.

May 1995

19 Judge Fitzpatrick denied a motion by Philip Morris Cos., Inc. and other tobacco companies to have the lawsuit dismissal for failure to state a claim. Fitzpatrick also turned down the defendants' motion to remove Blue Cross and Blue Shield as a plaintiff in the case. The ruling also allowed the defendants to take discovery from individual smokers, preserving all of the defenses asserted by the defendants including defenses based on smokers' conduct.

- **TEXAS**

November 1995

28 PM and four other major cigarette makers filed suit in federal court seeking a declaratory judgement against Texas Attorney General Dan Morales and two state agencies. Morales has said he intends to bring a lawsuit against the industry. to collect funds for Medicaid costs from smoking-related diseases. In a statement released by PM Inc. the companies said the intended lawsuit would violate the Texas constitution as well as the Texas state law and asks for a declaratory judgement that Morales lacks legal authority to file the suit. The other plaintiffs are R.J. Reynolds Tobacco Co., Brown & Williamson Tobacco Corp., Lorillard Tobacco Co. and Liggett Group Inc. Also named as defendants are the Health and Human Services Commission of the State of Texas, the Department of Health of the State of Texas and the Department of Human Services of the State of Texas.

- **WEST VIRGINIA**

May 1995

3 Circuit Judge Irene C. Berger dismissed eight out of ten claims of the state's Attorney General's lawsuit against the tobacco industry. The suit sought to recover money spent on behalf of Medicaid recipients who smoke cigarettes. Judge Berger's decision was based on Attorney General Darrell McGraw's lack of authority to assert the claims that were dismissed. The remaining claims are for alleged consumer fraud and antitrust violations. PM will ask the court to dismiss those claims as well.

October 1995

21 Judge Berger ruled that Attorney General Darrell V. McGraw Jr. cnanot hire lawyers outside this office and pay them out of money from settlements. This does not

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prohibit the Attorney General from hiring outside lawyers under other types of fee arrangements.

- **OTHER STATES**

February 1995

23 Assemblyman Richard Katz (D), introduced a bill which would allow the state of California and private insurance companies to sue tobacco companies to recover money spent on smoking-related illnesses. This would remove an exemption from product liability lawsuits that was given to tobacco companies in a 1988 legislative compromise streamlining the state's system of liability law. It would also allow private health care companies to sue for costs of providing health care to patients with tobacco-related illnesses and allow both the state and private firms to sue for punitive damages.

March 1995

13 Lawmakers are being asked to decide whether Maine should join the growing group of states suing tobacco companies to recover millions of dollars spent treating smoking-related diseases.

30 Connecticut Attorney General Richard Blumenthal asked the legislature Thursday to pass a law making easier for the state to win a lawsuit against cigarette makers to recover state Medicaid costs of smoking-related illnesses.

May 1995

16 The New York State Assembly Medicaid liability bill was discussed at a meeting of the state assembly Social Services committee. The bill is sponsored by Peter Grannis and is in its very early stages.

November 1995

16 Governor Parris Glendening announced plans for a lawsuit against the tobacco industry to reclaim Medicaid costs from smoking related diseases. According to The Washington Post, Maryland spends about $60 million a year on these costs. The Attorney General invited 100 law firms from around the country to submit proposals to represent the state of Maryland in the suit and to agree to accept a court-awarded fee if they won the case.

Philip Morris USA issued a statement which said that the state has no viable legal basis upon which to sue the cigarette manufacturers.

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PM SUITS

- **ABC**

January 1995

31 Circuit Judge T.J. Markow stayed his earlier ruling that ABC identify "Deep Cough" until March 1.

February 1995

22 RJR sues ABC over stories saying the tobacco industry manipulated the nicotine level in cigarettes to hook smokers.

March 1995

7 ABC wins George Polk Award for 1994 in the category of network television reporting for its "Day One" segment asserting tobacco companies artificially elevate nicotine content.

28 Judge Markow moved the trial date from June 5 to Sept. 18.

May 1995

5 Judge Markow denied ABC's motion for sanctions. The court did not find that the Philip Morris documents on red paper were difficult to read nor emitted an unpleasant order and that the material contains the information requested by ABC in reasonably usable form.

12 Lawyers for ABC asked Judge Markow for access to more internal memos and research arguing that the documents may prove PM's libel lawsuit groundless. The trial was to begin September 18 and has been pushed back to October 9.

23 *The Wall Street Journal* runs a feature piece on page one by Alix Freedman and Amy Stevens: "Tar Wars: Philip Morris is Putting TV Journalism on Trial in its Suit Against ABC."

July 1995

12 Judge Markow withdrew his order that ABC News disclose the name of its confidential source referred to as "Deep Cough." He wrote that before ABC must disclose its source, PM would have to supply more evidence that it could not get the information elsewhere and that it had a compelling need for the information.

20 According to the Richmond Times Dispatch, ABC contends that the $10 billion lawsuit filed by Philip Morris against ABC should over because PM has said it won't attempt to prove anything about its motive regarding the level of nicotine in cigarettes.

August 1995

21 Capital Cities/ABC agreed to settle the libel suit brought against it last year by Philip Morris Companies Inc. and Philip Morris Incorporated. As part of the settlement, ABC acknowledged that it made a mistake and has issued an apology to its viewers and to PM. ABC read the statement on World News Tonight and on Monday Night

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Football as well as on Day One on Thursday. ABC will pay the total amount of attorney's fees, costs, and out-of-pocket litigation expenses that PM incurred in connection with the lawsuit.

The Wall Street Journal runs "Capital Cities, Philip Morris Settle Lawsuit" by Alix Freedman and Elizabeth Jensen, *The New York Times* runs "ABC News Settles Suits on Tobacco by Mark Landler on the front page and *The Washington Post* runs "ABC Apologizes for Allegations About Nicotine 'Spiking' in Cigarettes by John Schwartz. Other coverage includes the Daily News, USA Today, the New York Post.

23 *The Washington Post* reports "Long-Term Effect of ABC Settlement Concerns Critics," which discusses the effect on journalism and free speech. Other coverage on this topic includes editorials and news stories in USA Today, the Daily News, Newsday, The Washington Times and The Boston Globe.

24 *The Wall Street Journal* reports on page 1 of the B Section (Marketplace) under Legal Beat "Why ABC settled with the Tobacco Industry" by Alix Freedman, Elizabeth Jensen and Amy Stevens.

Philip Morris runs "Apology Accepted." Ads in *The Wall Street Journal*, Daily News, Newsday, and New York Post. In addition, the ad ran in approximately 700 papers across the country.

The New York Times reported that Congressman Henry Waxman planned to send a letter asking Philip Morris to make public internal documents it filed in its suit against ABC. (Critic Pushes Tobacco Case Settled by ABC by Mark Landler.)

25 Under Review & Outlook, *The Wall Street Journal* discusses President Clinton's plan to curtail youth smoking and concludes that although government has a role -- such a campaign is better left to civic culture.

Plaintiffs lawyers in the Castano case subpoenaed ABC, it's three top executives and their law firm in the libel case, to turn over documents turned over to the network by PM. (Tobacco Plaintiff's Lawyers Seek Release of Philip Morris Papers" by Milo Geyelin.)

27 Philip Morris USA runs the advertisement "Is *The New York Times* in denial?" in the Sunday paper. The ad is a copy of the letter from James Morgan to the readers of *The New York Times* explaining that the Times' editorial entitled "Smoking's Unsettled State" was incorrect in it's characterization of ABC's "Day One" and PM lawsuit. In the Money and Business section, Stuart Elliot writes "Uncle Same is No Match for the Marlboro Man" which covers the history of Marlboro. More stories run across the country including *The Washington Post* and The Boston Globe.

28 *The New York Times* reports "Philip Morris Revels in Rare ABC News Apology for Report on Nicotine" by Mark Landler.

"Anti smoking Sentiment Flares In Europe's Smoke-Filled Cafes by Tara Parker-Pope runs in *The Wall Street Journal.*

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September 1995

1 *American Journalism Review* runs the piece "Striving to Unmask Anonymous Sources" by Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press. She discusses Philip Morris' efforts to find out the identity of 'Deep Cough.'

4 *Newsweek* reports "The Cave on Tobacco Road -- ABC's decision to settle with Philip Morris is a blow to all real reporting" by Jonathan Alter.

November 1995

1 *The American Bar Association Journal* publishes "Smoking Guns: ABC, Philip Morris and the Infamous Apology" by Steve Weinberg, an in-depth look at the ABC settlement.

- **EPA**

May 1995

24 The court denied EPA's motion to dismiss on the issue of legal standing. The industry's challenge to the EPA's arbitrary and capricious classification of environmental tobacco smoke will now proceed to trial or summary judgment. This is the second time the EPA has failed to have the case dismissed. The ruling clearly establishes that PM Incorporated and the other parties in the litigation have alleged sufficient fact to obtain judicial review of EPA's action.

- **STAR TOBACCO CORP.**

January 1995

19 PM (USA?) filed an unfair-competition suit in federal district court in New York against Star Tobacco Corp. for using a cowboy-theme marketing campaign for its Gunsmoke cigarette brand.

22 The judge in U.S. District Court in New York granted PM a temporary injunction that bars Star Tobacco Corp. from marketing its Gunsmoke cigarette.

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SMOKING AND HEALTH CASES

- **BROWN**

No new developments this year.

- **ROGERS**

January 1995

31 Jury selection began in the Rogers case at the Marion County Courthouse in Indianapolis, Indiana. Richard Rogers filed the lawsuit with his wife, Yvonne, in 1987 against PM, RJR, American Tobacco Co. and Liggett, as well as retailers, claiming that they caused his cancer. Seven months later he died and Yvonne amended the lawsuit to include charges of wrongful death and an unspecified amount in compensatory and punitive damages. The lawsuit also accuses the companies of negligence for promoting cigarette smoking as safe and pleasurable, but not hazardous.

February 1995

? The Rogers trial begins with Superior Court Judge Kenneth Johnson presiding. This is the first smoking liability lawsuit to go to trial since Congress held hearings last spring questioning tobacco executives about the dangers of smoking.

? Judge Johnson dismissed all claims for punitive damages, ruling that the plaintiff had not made a sufficient case to support such claims.

22 The jury foreman announced the jury could not return a unanimous verdict and therefore, refused to award damages to the Rogers family. Judge Johnson declared a mistrial. The case is scheduled for retrial in August 1996.

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OTHER LITIGATION AND RELATED ISSUES

January 1995

10 Federal Judge Richard Own dismissed a class-action lawsuit filed against PM by shareholders alleging the company made fraudulent statements in the months before the 1993 Marlboro price cut to raise the price of PM stock.

13 Three Canadian smokers filed a $1 million class action suit against three tobacco companies--Imperial, a wholly owned unit of Imasco Ltd., Rothmans Inc. and RJR Nabisco Holdings Corp's RJR--MacDonald Inc. The three plaintiffs claim to be addicted to cigarettes and are seeking "aggravated, punitive and exemplary damages" for their injuries.

30 The first tobacco liability suit to go to trial with the claim that, because of the plaintiffs' respiratory ailments, they are entitled to a smoke-free environment under the Americans with Disabilities Act. The non jury trial for Diane Emery, who suffers from cystic fibrosis, and Patricia Young, an asthmatic, will be held in federal court in Dallas, TX.

31 The British Legal Aid Board has granted preliminary aid to 300 British smokers seeking to sue five tobacco companies, including Philip Morris, claiming failure to warn of smoking dangers.

February 1995

2 U.S. District Judge Barefoot Sanders told plaintiffs that they should have brought their claim under the disabilities act's reasonable-accommodation provision, rather than the one they chose. The plaintiffs plan to appeal.

Legislation that would limit punitive damages and cap plaintiff attorneys' fees was introduced in the Senate. The bill would restrict punitive-damage awards in civil cases to three times compensatory damages, or $250,000, whichever is greater. The bill would also require plaintiffs lawyers in personal injury cases to charge hourly rates, instead of a standard contingent fee, when defendants made early settlement offers.

17 The House Commerce Committee approved legislation to give U.S. corporations relief from investor lawsuits, clearing the way for a vote in the full House in March.

March 1995

8 According to *The Wall Street Journal*, the Manville Unit sues an RJR Unit to bar fiberglass from cigarettes to avoid becoming entangled in a growing web of liability lawsuits.

8 The House approved a bill that would require losers to pay some of the legal expenses of winners in many civil lawsuits tried in federal courts. This was the first of three installments in the House Republicans' agenda to change the risks and rewards of litigation.

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8 By the year 2000, 59% of North Carolina's private employees will have no legal protection from second-hand smoke in the workplace, according to a new study from the Centers for Disease Control and Prevention. The study, published in *The Journal of the American Medical Association*, showed that the number of regulations restricting smoking has increased dramatically during the past year, but the new laws offer little protection for workers.

10 The House approved legislation to limit the size of damage awards in civil suits. The measure would set a national limit on the amount of punitive damages in almost all civil cases. The ceiling would be $250,000 or three times economic damages, whichever is greater. It would not affect suits brought under such federal laws as the Civil Rights Act and The Americans With Disabilities Act.

15 Mealey Publications Inc., a publisher known for comprehensive reporting of new niches of litigation, will produce *Mealey' s Litigation Report: Tobacco* bimonthly starting in May. Coverage will include week-to-week developments in the national class action, second-hand smoke lawsuits, state suits, etc. and will contain news stories, case summaries, full text of court opinions, complaints, etc.

20 The Seventh US Circuit Court of Appeals in Chicago refused to allow a group of hemophiliacs to proceed with a class-action suit alleging they contracted the AIDS virus through blood-clotting medicine. The order granting class status in the Castano case mirrored much of the reasoning that was struck down by the appeals court panel in Chicago.

22 According to a press report, eight nonsmokers who claim that Japan tobacco Inc. has a duty to pay compensation for damages allegedly caused by ETS exposure, filed suit.

April 1995

25 According to *The Wall Street Journal*, the Senate Labor and Human Resources Committee voted to delete a limit on punitive damages contained in legislation that sets new standards for medical malpractice litigation. The committee approved language that directs judges, rather than juries, to set punitive awards.

May 1995

5? Senate Republicans lost support for broad-based limits on civil lawsuits.

10 The Senate approved a product-liability bill, which would set new limits on lawsuits against manufacturers and distributors of faulty products.

July 1995

17 Ronald Motley, (Charleston, SC lawyer) showed tobacco industry documents to the Association of Trial Lawyers of America (ATLA) alleging that tobacco companies have actively marketed to minors in the '70's. The ATLA is the world's largest plaintiffs' bar.

August 1995

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2 Glenn Collins reports Tobacco Analysts' Files Subpoenaed in Suit in *The New York Times*. The records of five prominent tobacco securities analysts were subpoenaed by the consortium of 60 plaintiffs lawyers as part of the Castano case.

September 1995

2 Suein Hwang in *The Wall Street Journal* reports "Former Smoker Is Awarded $2 Million In Suit Over Illness Blamed on Filter." Milton Horowitz, a 72-year-old former smoker who blames his illness on a type of filter used in Lorillard Inc.'s Kent cigarettes from 1952-56 won the suit. A state court jury in San Francisco decided that Lorillard and on-time filter manufacturer Hollingsworth & Vose Co. should be held responsible for the rare asbestos-related disease. Horowitz and his wife were awarded $1.3 million in compensatory damages and $700,000 in punitive damages--the largest award in a tobacco liability case. Lorillard attorneys vowed to appeal the decision.

6 Milo Geyelin in *The Wall Street Journal* reports "Lawyers Stress Fiscal Benefits of Smoking. According to court pleadings , where the states are trying to recover the costs of treating welfare recipients, tax revenues are a benefit for the states for the sale of cigarettes. He cites Murray R. Garnick of Arnold & Porter who said that the lawsuits do not depend upon a showing that cigarette companies committed a wrong. "The theory that premature death from smoking saves states money, he added, is supported by studies conducted by the Congressional Research Service and Rand Corp.

11 U.S. District Judge Michael Mukasey dismissed two class-action cases against Philip Morris that alleged violations of securities laws arising out of claimed misrepresentations about nicotine. The shareholder plaintiff's argued that PM Companies Inc. and its corporate officers misled them by concealing evidence that nicotine is addictive. The cases were State Board of Administration of Florida v. Philip Morris Companies, Inc. et al. and Betty Grayson Kurzweil et al. v. Philip Morris Companies, Inc. et al.

26 John Schwartz and Saundra Torry in *The Washington Post* report "Anti-Tobacco Activists Hope to Put Industry's Legal Tactics on Trial" with a sidebar "In Practice of Corporate Defense, Kansas City Firm Has Privileged Position." Both discuss the defense strategy of Shook, Hardy & Bacon.

October 1995

13 *Tobacco Reporter* does "A Guide to U.S. litigation affecting the tobacco industry."

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ALLEGED NICOTINE "MANIPULATION"/"ADDICTION"

February 1995

13 The Center on Addiction and Substance Abuse (CASA) at Columbia University released a study that abuse of tobacco, drugs and alcohol will eat up nearly one-fifth of the $430 billion the country will spend this year on Medicaid, Medicare and other federal health and welfare programs. The country will have $77.6 billion in substance-related costs.

14 Testimony was given at a hearing in Annapolis to oppose the "spiking" bill (SB 171) in Maryland. SB 171 would add a provision to the Maryland Code prohibiting any person from "spiking" any cigarette intended to be offered for sale in Maryland. "Spiking" is defined to mean "increasing the nicotine content" of cigarette smoke by means of either "an addition to" or "a manipulation of" the "ingredients" of the cigarette.

? A U.S. national survey found broad support among adults for a variety of strategies aimed at preventing children from using tobacco. Among the various survey finding was that 71% supported extending government regulation of nicotine products. The survey was sponsored by Robert Wood Johnson Foundation, a health-care philanthropy group.

May 1995

15 David Kessler called for a campaign to stop youngsters from becoming addicted to tobacco at a special Harvard Medical School lecture. Kessler said he could not comment on the FDA deliberations or the timetable for making a decision on whether the agency has jurisdiction over nicotine as a drug, which is defined by agency regulations as an "article (except for food) intended to affect the structure and function of the body."

June 1995

8 *The New York Times* runs a story declaring that 15 years of previously undisclosed research shoed that PM studied nicotine and found that it affected the body, brain and behavior of the smoker. The article also stated that these documents asserted that PM focused on college students and young teenagers. James Morgan, president of PM USA, sent a letter to *The New York Times* refuting these allegations. The letter was never published.

Rep. Martin T. Meehan, D-Mass., wrote Attorney General Janet Reno asking her to renew investigations into perjury and fraud by Philip Morris with regard to *The New York Times* articles.

Rep. Henry Waxman, D-Calif. sent a letter to former PM CEO William Campbell saying the documents appear to conflict fundamental with Campbell's sworn testimony. Waxman asked Campbell for a personal explanation.

9 *The New York Times* ran a follow-up story saying that some members of Congress have suggested that PM executives have deceived the public. Plaintiffs'

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lawyers in tobacco suits said the company research would have a major effect on anti-tobacco litigation.

Geoffrey Bible sent a memo to employees regarding the two pieces in *The New York Times*. In it he stated that the documents cited in the articles raise no new questions concerning possible jurisdiction of cigarettes by the FDA. The information in *The New York Times* in no way conflicts with or contradicts the testimony given by PM officials during Congressional hearings conducted by Rep. Henry Waxman last year. Bible also said that most of the documents discussed in the article were produced to the plaintiffs in the Cipollone trial in 1988. Contrary to *The Times'* contention, these documents are not "new news." Much of the research referred to was conducted at a time when a number of researchers, including members of the tobacco working Group and the National Cancer Institute, suggested the development of cigarettes with altered tar and nicotine ratios.

28 Health Canada released a study on nicotine levels in cigarette tobacco and tobacco smoke. The study analyzed Canadian cigarettes sold between 1968 and 1995.

July 1995

4 *The New York Times* reported that the Univ. of California will make available hundreds of documents showing that the tobacco industry concealed its knowledge of the addictive nature of nicotine and other harmful effects of smoking.

14 *The New York Times* article stated that when PM said Merit had less than half the "tar" of regular cigarettes, it did not say that it also had 60% of the nicotine. *The Times* said that this is at odds with what the industry has stated--that nicotine levels rise and fall in direct proportion to "tar" levels.

October 1995

18 Alix Freedman of *The Wall Street Journal* reported that according to Brown & Williamson internal reports, leading U.S. tobacco firms enhance nicotine delivery to smokers by adding ammonia-based compounds to their cigarettes. The B&W documents state that "Ammonia technology is critical to the Marlboro character, taste and delivery." Story was entitled "Tobacco Firm Shows How Ammonia Spurs Delivery of Nicotine" and includes a side-bar "Fine-Tuning Marlboro" which talks about the amounts of sugar, humectants and acetaldehyde in Marlboro.

Philip Morris USA released a statement in response to *The Wall Street Journal* story which stated that the company does not use ammonia in the cigarette manufacturing process to increase the amount of nicotine inhaled by the smoker or to "affect the rate of absorption of nicotine in the bloodstream of the smoker," or "to increase the potency of the nicotine a smoker actually inhales."

25 Dr. Victor DeNoble spoke to Minnesota's Smoke Free 2000 Coalition because he supported Minnesota legislation that would cut off tobacco from youth. DeNoble did research on nicotine when he worked at Philip Morris.

November 1995

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

9 A CBS-TV station in Los Angeles kiled a controversial commercial critical of the tobacco industry. The spot was killed after the station manager reevaluated the line "the more nicotine cigarettes have, the more hooked you'll be." The stationer managers decided the line implied "spiking." *The New York Times* reported the story on November 11. The station resumed showing the ad on November 15.

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

FDA

January 1995

3 Front-line, a PBS documentary series, airs "The Nicotine War," which looks at the efforts of Kessler to regulate the nicotine content in tobacco products. The piece climaxes with an account of how recent legislative efforts to regulate the tobacco industry have been derailed by a powerful Republican-led Congress.

February 1995

17 A House Republican bill aimed at putting a moratorium on new federal regulations was approved by the House Gov't Reform and Oversight Committee. The bill, if enacted, would prevent the FDA from deciding this year to regulate cigarettes. The moratorium would end December 31, 1995.

March 1995

8 David Kessler spoke to Columbia University Law School students and resumed his crusade against tobacco by labeling teen smoking as a "pediatric disease." He attacked tobacco companies for allegedly encouraging teen smoking through aggressive advertising campaigns.

26 *The New York Times* ran Glen Collins piece "Making Gains on the Winds from Washington--What if Congress Reforms the FDA? Investors Should Think About it Now"

May 1995

15 David Kessler called for a campaign to stop youngsters from becoming addicted to tobacco at a special Harvard Medical School lecture. Kessler said he could not comment on the FDA deliberations or the timetable for making a decision on whether the agency has jurisdiction over nicotine as a drug, which is defined by agency regulations as an "article (except for food) intended to affect the structure and function of the body."

16 *New York Newsday* features a large piece by Rita Ciolli "Escalating the War on Tobacco--With Teen Smoking on the Rise, an FDA Crackdown on the Tobacco Industry is Expected Soon." Piece ran again on May 19 in the *Los Angeles Times* and on the wires.

July 1995

13 Phil Hilts of *The New York Times* reported that the FDA has concluded for the first time that nicotine is a drug that should be regulated and has submitted a proposal to President Clinton. In the piece, Richard Burr (R-NC) said that as long as tobacco is a legal product, all federal agencies hsuld treat it as a legla product.

Suein Hwang and Alix Freedman of *The Wall Street Journal* reported that the FDA is seeking White House approval for a new attack on smoking by children by proposing tough new federal restrictions on cigarette and smokeless tobacco sales to minors.

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

DRAFT

1 4 A news conference was held on Capitol Hill by a group of tobacco state lawmakers asserting that Kessler is vastly exceeding his authority and demanded that Clinton rein him in. House Speaker Newt Gingrich said "The FDA has lost it's mind." Rep. Richard Burr (R-NC) asserted that the FDA should concentrate on it's "core mission" of approving drugs and medical devices.

The Wall Street Journal reported that President Clinton backs action to curb teen smoking and shares the FDA's concern about underage smoking. Clinton also stated that he had not received recommendations from FDA. *The Wall Street Journal* runs two other pieces one on nicotine and low-tar cigarettes questioning nicotine to tar rations and the other on the FDA's proposal will aid plaintiffs in tobacco suits.

August 1995

3 Wall Street Journal reports Clinton will support FDA's effort to assert jurisdiction over tobacco. Details are sketchy but administration officials state that jurisdiction would be limited to areas related to minors' smoking.

-- COSH holds press conference to announce results of poll claiming their research shows 67% of those surveyed support FDA regulation of tobacco.

PM USA issues statements to those reporters questioning *The Wall Street Journal*'s story stating that the company did not know if the report was correct.

4 Tim Noah reports in *The Wall Street Journal* that House Minority Leader Richard Gephardt joined forces with tobacco-state Democrats to block White House plans to extend federal regulation to cigarettes.

Milo Geyelin writes "Does FDA's Power Extend to Cigarettes" for the law section of the Journal which questions whether the FDA has legal authority.

9 President Clinton cracked down on teenage smoking in a speech to the National Baptist Convention in North Carolina and stated that he would have a *more definitive plan* within the near future.

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

DRAFT

15 Glenn Collins piece "Judge Who Ruled Pro-Tobacco Named to Hear Companies' Suit" reports that Judge William L. Osteen Sr., U.S. District Court for the Middle District of North Carolina will hear the industry's suit against the FDA.

The Wall Street Journal prints the editorial "An FDA Smoke Screen" by Robert Goldberg, a senior research fellow at Brandeis University's Gordon Public Policy Center. Mr. Goldberg likens tobacco to "thalidomide, allowing the FDA to 'reinvent itself as the only thing standing between our children and certain danger." He goes on to explain that there is no need to protect our children. The hazards of smoking are well publicized.

21 *The Wall Street Journal* prints "Clinton Ad Ban could Strengthen Philip Morris" by Suein Hwang. Story ran on page 1 of Section B. Hwang explains the theory that in the past, when cigarette advertising has been restricted, weaker brands lose market share and consequently, the more successful brands get stronger.

22 "Lighting a Fire: Long FDA Campaign and Bit of Serendipity Led to Tobacco Move" by Laurie McGinley and Timothy Noah runs on page 1 of *The Wall Street Journal*. The piece discusses the growing hostile environment towards tobacco smoking from the mid 80's to the present time and the events leading up to President Clinton's and Commission David Kessler's unveiling of the proposed FDA regulations on cigarette marketing and sales.

28 Business Week News Analysis and Commentary column runs "The FDA vs. Big Tobacco" and questions FDA authority with sidebar "Warning: Cigarette Bans Do Not Curb Teen Smoking."

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

FTC

June 1995

7 PM USA has agreed to stop placing cigarette billboards in prominent view of television cameras at professional sports arenas and playing fields of televised baseball, basketball, football and hockey games across the U.S. The agreement between PM and the Department of Justice also bars placement of cigarette ads in locations "most likely" to appear on TV during game broadcasts.

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

OSHA

January 1995

The Department of Energy (DOE) issued "Choices in Risk Assessment", a report that sharply questions the manner in which the EPA and OSHA have chosen and manipulated scientific data to discourage smoking and to justify a proposed total smoking ban in American workplaces.

17 RJR testified at the OSHA hearings stating that studies used to support its proposed nearly-total ban on smoking in the workplace as a health hazard were flawed. Rather than use ETS or a surrogate, most of the studies used mainstream smoke, which is known to be physically and chemically very different from ETS. Not only is ETS epidemiology flawed, none of the studies OSHA sites and relies on actually measured ETS exposure in the workplace.

26 OSHA Reform bill was introduced by Representative Joel Hefley which would establish and amend criteria for the development of safety and health standards.

Congressman Ballangers OSHA reform bill was introduced proposing sweeping reform of OSHA rule making and enforcement.

March 1995

3 OSHA created a "rapid response team" that allegedly looks for assertions it believes are not true, or only partially true.

13 OSHA Hearings on its IAQ/Indoor Workplace Smoking ban adjourned.

April 1995

19 According to a report, a Washington , DC think tank reportedly unveiled a proposal which recommended abolishing OSHA along with several other Cabinet-level departments.

June 1995

14 The post hearing comment period with regard to the OSHA hearings was extended at the request of OSHA. The first part of the comment period to submit written information, is extended from July 3 to September 1, 1995 and the second part, for submitting post-hearing briefs, has been extended from September 11 to November 13, 1995.

August 1995

14 House oversight and investigations subcommittee looked into the connection between an OSHA employee and her former company, Meridian Research which was entered into a contract with OSHA to assess whether there is a link between ETS exposure in the workplace and increased risk of lung cancer and heart disease.

18 OSHA entered approximately 1,600 scientific documents into the docket --- the vast majority were on ETS and alleged health effects.

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

ETS

January 1995

5 The Center's for Disease Control (CDC) issued a report on asthma in which researchers speculated that asthma cases may have increased due to ETS exposure, air pollution and smoking.

7 According to *The Chronicle,* Japan Tobacco Inc. announced the development of a smokeless cigarette.

10 According to *The Wall Street Journal*, Mayor Rudolph Guliani signed into law the New York City smoking law which took effect April 10.

11 According to the *Globe and Mail,* Health Canada launched two television and newspaper ads which featured infants and children being exposed to ETS.

25 According to *USA Today*, eight US and European airlines were granted antitrust immunity by the Department of Transportation (DOT) to discuss a mutual smoking ban on transatlantic flights.

February 1995

According to news reports, two days after the Mayor of São Paulo announced a decree banning smoking in over 40,000 restaurants and bars, two restaurants were able to obtain an injunction against the new law.

3 The Tobacco Institute of Australia (TIA) was accused by Simon Chapman of misleading the country's business community through the distribution of a booklet "Clearing the Air for All."

24 According to *USA Today*, Virgin Atlantic will introduce a non-smoking policy on all flights worldwide except on its London to Tokyo route beginning May 1, 1995.

The Australian Trade Practices Commission advised the Tobacco Institute of Australia (TIA) it received a complaint regarding claims made by the TIA in their booklet "Clearing the Air for All." The complainant failed to identify themselves to the Commission.

March 1995

A study by Riboli et al. entitled "Misclassification of smoking Status Among Women in Relation to Exposure to Environmental Tobacco Smoke," was published. Riboli, attempts to show that misclassification of nonsmokers in ETS epidemiological studies is less than 2 %.

2 According to *Reuters*, restrictions on smoking in all European Parliament buildings have been approved as an amendment to the Commission's 1995-1999 action plan to fight cancer in Europe.

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000

A study, published in *The Journal of the American Medical Association*, showed that the number of regulations restricting smoking has increased dramatically during the past year, but the new laws offer little protection for workers.

9 The Tobacco Institute of Australia(TIA) responded to Trade Commission regarding the accuracy of the booklet "Clearing the Air for All," and sent materials to demonstrate that the booklet is factually accurate.

16 A study published in *New England Journal of Medicine*, stated that in people with mouth and throat cancer, they found an unusual frequency of mutations in p53, the crucial "guardian angel" gene, which is found in smokers. The new research suggested that tobacco smoke, especially when accompanied by alcohol, markedly raised the risk of p53 mutation in the cells between the lip and the larynx.

20 According to press reports, the alleged health effects of exposure to ETS were the subject of a campaign sponsored in part by the Washington chapter of the American Academy of Pediatricians.

22 According to a press report, eight nonsmokers filed suit and claimed that Japan Tobacco Inc. had a duty to pay compensation for damages allegedly caused by ETS exposure.

27 Maryland Governor Glending signed into law an emergency bill that would permit smoking in a number of venues affected by the workplace smoking ban promulgated by the Commissioner of the Division of Labor and Industry and scheduled to go into effect March 27.

April 1995

Jacob Sullum wrote a three-page Post Script to the "Whiffs on Risk" which was published in the Spring 1995 issue of Forbes *Media Critic*.

10 New York City's anti-smoking law goes into effect. The law forbids smoking anywhere in the dining areas of restaurants seating more than 35 patrons. Smoking will still be permitted in separate lounges and at bars six feet away from the nearest table.

11 Researchers Joseph DiFranza and Robert A. Lew report in the April issue of the *Journal of Family Practice* that smoking may cause as many as 7.5% of all miscarriages. The article is based upon a meta-analysis of about 100 studies related to smoking and natal and neonatal health.

May 1995

8 PM Europe S.A. launched a pan-European issues campaign and placed full-page ads in five major publications. The concept of the ads is "The passion to regulate down to the finest detail of people's lives can lead to infringements of personal liberty."

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Source: https://www.industrydocuments.ucsf.edu/docs/zhgl0000